

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)	
)	
v.)	3:08-CR-174
)	JUDGES PHILLIPS/SHIRLEY
CLARK ALAN ROBERTS, and)	
SEAN EDWARD HOWLEY,)	
)	
Defendants.)	

**GOVERNMENT’S RESPONSE TO DEFENDANTS’ MOTION TO REQUIRE
GOVERNMENT TO PROVE ALLEGED TRADE SECRET**

COMES NOW the United States of America, by and through its undersigned counsel and hereby files this response in opposition to Defendants’ Motion to Require Government to Prove Alleged Trade Secret and respectfully requests that the Motion be denied.

The defendants’ state in their motion that they are “requesting that the Court require the government to prove the elements of the alleged offense, which include that he was appropriating a trade secret.” Defendant’s Motion at 2. Federal Rule of Criminal Procedure 12(b)(2) states that a “party may raise by pretrial motion an defense, objection, or request that the court can determine without a trial of the general issue.” The Federal Rules of Criminal Procedure do not provide for a pretrial determination of the sufficiency of the evidence in a criminal case. The issue of sufficiency of the government's evidence must be tested at the time of trial. *United States v. Ferro*, 252 F.3d 964, 968 (8th Cir. 2001) *citing United States v. Critzer*, 951 F.2d 306, 307-8 (11th Cir. 1992).

Clearly, the defendants’ motion is asking this Court to require the government to prove an element of one of the charged offenses prior to trial. Thus, the defendant’s motion is not allowed

by Rule 12(b)(2) or any other Federal Rule of Criminal Procedure since it is asking the court to decide an issue that cannot be decided without a trial and their motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 5, 2009, a copy of the foregoing RESPONSE TO DEFENDANTS MOTION TO REQUIRE GOVERNMENT TO PROVE ALLEGED TRADE SECRET was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

By: /s/ D. Gregory Weddle
Assistant United States Attorney